

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 394

Introduced by Morfeld, 46.

Read first time January 14, 2021

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to housing; to amend sections 25-21,223 and
2 76-1446, Reissue Revised Statutes of Nebraska; to adopt the Public
3 Health Emergency Housing Protection Act; to change provisions
4 relating to deadlines for trials in actions for possession and
5 forcible entry and detainer; to repeal the original sections; and to
6 declare an emergency.
- 7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 9 of this act shall be known and may be
2 cited as the Public Health Emergency Housing Protection Act.

3 Sec. 2. (1) For purposes of the Public Health Emergency Housing
4 Protection Act:

5 (a) County board means a county board of commissioners or
6 supervisors;

7 (b) Dwelling unit includes a dwelling unit as defined in sections
8 76-1410 and 76-1459;

9 (c) Eviction means the use by a landlord of any judicial or
10 nonjudicial means to involuntarily terminate a rental agreement or
11 tenancy or remove a tenant from a dwelling unit;

12 (d) Eviction action means a judicial or administrative proceeding
13 that seeks recovery or possession of a dwelling unit from a tenant,
14 including under sections 76-1440 to 76-1447 or under section 76-14,104;

15 (e) Eviction notice means any notice directing a resident to vacate
16 a dwelling unit or purporting to terminate a rental agreement or tenancy;

17 (f) Eviction order means any order entered in an eviction action
18 that directs or authorizes the removal of a tenant from a dwelling unit.
19 Notwithstanding that such an order may require removal of a person from a
20 dwelling unit, eviction order does not include a domestic violence
21 protection order issued pursuant to section 42-924, a harassment
22 protection order issued pursuant to section 28-311.09 or 28-311.10, or a
23 sexual assault protection order issued pursuant to section 28-311.11 or
24 28-311.12, or any similar order entered in any type of proceeding to
25 protect a tenant from domestic violence, sexual violence, stalking, or
26 other violence. Eviction order also does not include an order restoring a
27 resident to possession of the premises under section 7 of this act;

28 (g) Judicial foreclosure action means an action that seeks the
29 foreclosure or satisfaction of a mortgage in accordance with sections
30 25-2137 to 25-2155;

31 (h) Landlord includes a landlord as defined in sections 76-1410 and

1 76-1462;

2 (i) Local public health department or department means a county,
3 district, or city-county health department as defined in section 71-1626;

4 (j) Moratorium period means the period beginning on the date a
5 moratorium is enacted under section 3, 4, or 5 of this act and lasting
6 until the moratorium is terminated;

7 (k) Municipality means a city of any class or a village;

8 (l) Rent includes rent as defined in sections 76-1410 and 76-1467;

9 (m) Rental agreement means a rental agreement as defined in sections
10 76-1410 and 76-1468;

11 (n) Tenant includes a tenant as defined in sections 76-1410 and
12 76-1471 and also includes any member of a tenant's household, whether or
13 not listed in a rental agreement;

14 (o) Trust deed has the same meaning as in section 76-1001; and

15 (p) Trustee has the same meaning as in section 76-1001.

16 (2) When reference in this section is made to a definition found in
17 both the Uniform Residential Landlord and Tenant Act and the Mobile Home
18 Landlord and Tenant Act, the definition relevant to the type of tenant or
19 dwelling unit at issue applies for purposes of the Public Health
20 Emergency Housing Protection Act.

21 Sec. 3. (1)(a) If a municipality finds that it is necessary to
22 protect the public welfare from the spread of a virus or infectious
23 disease, the municipality may enact a moratorium on any evictions and
24 foreclosures within the municipality.

25 (b) A moratorium may be enacted by either the governing body of the
26 municipality or the mayor or city manager of the municipality, by
27 resolution or proclamation.

28 (2)(a) Except as provided in subdivision (2)(b) of this section, the
29 moratorium shall end when either the governing body or the mayor or city
30 manager of the municipality determines, by resolution or proclamation,
31 that the moratorium is no longer necessary to protect the public welfare,

1 regardless of which entity enacted the moratorium. The moratorium period
2 shall terminate on the date specified in the resolution or proclamation,
3 which shall not be sooner than fourteen days after the issuance of the
4 resolution or proclamation.

5 (b) If the moratorium is enacted by the governing body of the
6 municipality and the mayor or city manager terminates the moratorium, the
7 governing body may reinstate the moratorium with a two-thirds majority
8 vote.

9 Sec. 4. (1) If a county board finds that it is necessary to protect
10 the public welfare from the spread of a virus or infectious disease, the
11 county board may by resolution enact a moratorium on any evictions and
12 foreclosures within the county.

13 (2) The moratorium may apply to any area within the county,
14 including within a municipality. The moratorium may apply to the entire
15 county or any portion or portions of the county.

16 (3) The moratorium shall end when the county board determines by
17 resolution that the moratorium is no longer necessary to protect the
18 public welfare. The moratorium period shall terminate on the date
19 specified in the resolution, which shall not be sooner than fourteen days
20 after the issuance of the resolution or proclamation.

21 (4) A municipality that is subject to a moratorium enacted by a
22 county pursuant to this section may terminate the moratorium within the
23 jurisdiction of such municipality if either the governing body or the
24 mayor or city manager of the municipality determines, by resolution or
25 proclamation, that the moratorium is no longer necessary to protect the
26 public welfare. The moratorium period shall terminate on the date
27 specified in the resolution or proclamation, which shall not be sooner
28 than fourteen days after the issuance of the resolution or proclamation
29 by the county.

30 Sec. 5. (1) If a local public health department finds that it is
31 necessary to protect the public welfare from the spread of a virus or

1 infectious disease, the department may by resolution enact a moratorium
2 on any evictions and foreclosures within the jurisdiction of the
3 department.

4 (2) The moratorium may apply to any area within the jurisdiction of
5 the department, including across county lines and within a municipality.
6 The moratorium may apply to the entire jurisdictional area or any portion
7 or portions of such area.

8 (3) The moratorium shall end when the local public health department
9 determines by resolution that the moratorium is no longer necessary to
10 protect the public welfare. The moratorium period shall terminate on the
11 date specified in the resolution, which shall not be sooner than fourteen
12 days after the issuance of the resolution or proclamation.

13 (4) A municipality that is subject to a moratorium enacted by a
14 local public health department pursuant to this section may terminate the
15 moratorium within the jurisdiction of such municipality if either the
16 governing body or the mayor or city manager of the municipality
17 determines, by resolution or proclamation, that the moratorium is no
18 longer necessary to protect the public welfare. The moratorium period
19 shall terminate on the date specified in the resolution or proclamation,
20 which shall not be sooner than fourteen days after the issuance of the
21 resolution or proclamation by the county.

22 Sec. 6. (1) During the period in which a moratorium is in effect,
23 the following shall apply to any dwelling unit within the jurisdiction
24 covered by the moratorium:

25 (a) A landlord shall not serve a tenant of such a dwelling unit with
26 a notice of intent to terminate a rental agreement or an eviction notice.
27 Any such notice issued to a tenant during the moratorium period is void
28 and shall not be enforced against the tenant;

29 (b) A landlord shall not file a judicial eviction action against a
30 tenant of such a dwelling unit. A court in which such an action is filed
31 shall summarily dismiss such action;

1 (c) A court in which an eviction action relating to such a dwelling
2 unit is pending shall not convene to hear such action or decide such an
3 action;

4 (d) Service of process shall not be issued against a tenant for an
5 eviction action concerning such a dwelling unit;

6 (e) A court shall not accept for filing any eviction action relating
7 to such a dwelling unit;

8 (f) All deadlines pertaining to the filing, service, or other
9 prosecution of an eviction action relating to such a dwelling unit are
10 tolled for the duration of the moratorium period;

11 (g) No eviction order shall be served or executed on a tenant of
12 such a dwelling unit; and

13 (h) A landlord shall not assess fees, penalties, or other charges to
14 a tenant for nonpayment of rent for such a dwelling unit.

15 (2) During the six months following expiration of a moratorium
16 period, a landlord shall not terminate or decline to renew a rental
17 agreement because of a rent delinquency that arose during a moratorium
18 period.

19 (3)(a) Following the expiration of the six-month grace period
20 described in subsection (2) of this section, a landlord shall not
21 terminate or decline to renew a rental agreement because of a rent
22 delinquency that arose during a moratorium period and that remains unpaid
23 unless the landlord first allows the tenant the opportunity to propose a
24 reasonable payment plan. If the proposed payment plan is reasonable under
25 the circumstances, the landlord shall accept the plan.

26 (b) A payment plan is presumptively reasonable for purposes of this
27 subsection if:

28 (i) The tenant agrees that future rental payments will be paid in
29 full as they come due;

30 (ii) Any arrearage on the tenant's account will be paid in full
31 within six months of the agreement; and

1 (iii) The tenant has, or there is good cause to believe the tenant
2 will have, the means to make the required payments according to the
3 schedule.

4 (c) In an eviction action governed by this subsection:

5 (i) The landlord has the burden to prove that the landlord provided
6 an opportunity to propose a reasonable payment plan as required by
7 subdivision (3)(a) of this section;

8 (ii) The tenant has the burden to prove that the tenant offered a
9 payment plan and the proposed terms of such plan; and

10 (iii) If the terms of the proposed payment plan are presumptively
11 reasonable under subdivision (3)(b) of this section, the landlord shall
12 have the burden to prove that the plan was not, in fact, reasonable under
13 the circumstances. If the plan was not presumptively reasonable, the
14 tenant has the burden to prove that the plan was, in fact, reasonable
15 under the circumstances.

16 (4) Except as provided in subsections (5) and (6) of this section,
17 this section does not preclude a landlord from terminating, after
18 expiration of the moratorium period, and for a good cause unrelated to
19 the rent delinquency, the rental agreement of a tenant who became
20 delinquent in rent during a moratorium period.

21 (5) After expiration of a moratorium period, a landlord may
22 terminate a rental agreement that existed during the moratorium period
23 for good cause that arose during the moratorium period, other than a
24 delinquency in rent, only as follows:

25 (a) By giving a new eviction notice that provides the tenant the
26 opportunity to cure the lease violation as required by law, if any; or

27 (b) By giving the tenant at least thirty days' written notice to
28 vacate the premises if (i) no eviction notice would have been required to
29 terminate the rental agreement prior to the moratorium period or (ii) an
30 eviction notice was given before the moratorium period and the deadline
31 for the tenant to preserve the rental agreement by curing the lease

1 violation, if any, expired prior to the expiration of the moratorium
2 period.

3 (6) A landlord shall not terminate or attempt to terminate a rental
4 agreement that existed during a moratorium period wholly or in part
5 because of the tenant's assertion or exercise of a right or protection
6 arising under this section. It shall be a defense to a rental agreement
7 termination or eviction action that the landlord's action was motivated
8 wholly or in part by the tenant's assertion of such right or protection.

9 Sec. 7. (1) Any tenant displaced from a dwelling unit in violation
10 of section 6 of this act may bring an action for a writ of restitution to
11 be restored to such dwelling unit. Such a claim shall constitute an
12 emergency and critical function of the judicial system. The procedure for
13 such a claim shall be as follows:

14 (a) The tenant shall initiate such action by filing a sworn
15 complaint stating the factual basis for the claim and requesting relief
16 as authorized by this subsection;

17 (b) The court shall schedule a hearing on the complaint for as soon
18 thereafter as practicable. Such hearing may be held by telephone or
19 videoconference or through other remote means if practicable, if such
20 means are available to the parties and the court; and

21 (c) Unless the hearing on the complaint is held on the same day as
22 it is filed, the court shall consider the sworn allegations in the
23 complaint and may, on the basis of such sworn allegations, issue an ex
24 parte order that entitles the tenant to immediate and temporary
25 possession of the dwelling unit pending the hearing.

26 (2) A tenant adversely affected by any violation of section 6 of
27 this act may bring a civil action to restrain further violations and to
28 recover the tenant's damages, costs, and reasonable attorney's fees. In
29 the case of a willful violation, such tenant shall be awarded damages
30 equal to the tenant's actual and consequential damages or liquidated
31 damages equal to three times the monthly rent, whichever is greater. An

1 action under this subsection may be combined with or brought in addition
2 to an action under subsection (1) of this section.

3 (3) This section waives sovereign immunity with respect to any
4 violation of section 6 of this act committed by a public official or
5 agency, including any landlord which is a public housing agency or
6 governmental entity.

7 Sec. 8. (1) During the period in which a moratorium is in effect,
8 the following shall apply to any real property of a landlord within the
9 jurisdiction covered by the moratorium that contains one or more dwelling
10 units rented to tenants:

11 (a) A mortgagee shall not file a judicial foreclosure action against
12 a mortgagor of such real property. A court in which such an action is
13 filed shall summarily dismiss such action;

14 (b) A trustee of any trust deed for such real property shall not:

15 (i) Exercise the power of sale as provided in section 76-1005;

16 (ii) Foreclose upon the trust deed in the manner provided by law for
17 the foreclosure of mortgages on real property as provided in section
18 76-1005;

19 (iii) File for recording a notice of default as provided in section
20 76-1006; or

21 (iv) Publish a notice of sale as provided in section 76-1007;

22 (c) An office of the register of deeds in which a notice described
23 in subdivision (1)(b)(iii) is filed shall refuse to record or accept such
24 filing;

25 (d) Service of process shall not be issued against a mortgagor of
26 such real property for a judicial foreclosure action concerning such real
27 property;

28 (e) A court in which a judicial foreclosure action concerning such
29 real property is pending shall not convene to hear such an action or
30 decide such an action;

31 (f) A court shall not accept for filing any judicial foreclosure

1 action concerning such real property; and

2 (g) The following deadlines shall be tolled for the duration of the
3 moratorium period:

4 (i) All deadlines pertaining to the filing, service, or other
5 prosecution of a judicial foreclosure action;

6 (ii) All deadlines pertaining to exercising the trustee's power of
7 sale or foreclosure under section 76-1005;

8 (iii) All deadlines pertaining to the filing, service, or other
9 prosecution of an action commenced to recover the balance due upon the
10 obligation for which a trust deed was given as security under section
11 76-1013; and

12 (iv) All deadlines relating to exercising the right to cure a
13 default under section 76-1012.

14 (2)(a) For purposes of this subsection:

15 (i) Covered property means real property of a landlord located
16 within the jurisdiction covered by a moratorium and which contains one or
17 more dwelling units rented to tenants; and

18 (ii) Grace period means the period in which a moratorium is in
19 effect and for six months after the expiration of the moratorium period.

20 (b) Notwithstanding any other provision of law, during the grace
21 period, if a landlord provides the notice described in subdivision (2)(c)
22 of this section, neither a county nor any other political subdivision
23 shall assess late fees, interest, or penalties on any property taxes or
24 special assessments on covered property that became delinquent during the
25 grace period.

26 (c) To qualify for the protections of this subsection, a landlord
27 shall, on or before thirty days after the first date any property tax or
28 special assessment on covered property becomes delinquent, notify the
29 county clerk that the landlord's real or personal property is covered by
30 this subsection. The Department of Revenue shall develop a standard form
31 that shall be utilized to provide such notice.

1 (3) A landlord adversely affected by any violation of this section
2 may bring a civil action to restrain further violations and to recover
3 damages, costs, and reasonable attorney fees. In the case of a willful
4 violation, such landlord shall be awarded damages equal to the landlord's
5 actual and consequential damages or liquidated damages equal to three
6 times the monthly mortgage payment, whichever is greater.

7 Sec. 9. (1) The Public Health Emergency Housing Assistance Fund is
8 created. The fund shall be administered by the Department of Health and
9 Human Services.

10 (2) The Public Health Emergency Housing Assistance Fund shall
11 consist of:

12 (a) Money which is received as gifts or grants or collected as fees
13 or charges from any source, including federal, state, public, and private
14 for purposes of housing assistance; and

15 (b) Federal funds which are available to the State of Nebraska and
16 are related to the COVID-19 emergency response and which may be used for
17 housing assistance. Such federal funds include, but are not limited to,
18 federal money available for housing assistance pursuant to the federal
19 Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136.
20 If the state receives such federal funds, the State Treasurer shall
21 immediately credit such funds to the Public Health Emergency Housing
22 Assistance Fund.

23 (3) Any money in the Public Health Emergency Housing Assistance Fund
24 available for investment shall be invested by the state investment
25 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
26 State Funds Investment Act.

27 (4) The department shall use the Public Health Emergency Housing
28 Assistance Fund to provide housing assistance pursuant to this section.

29 (5) If the state receives federal funding described in subdivision
30 (2)(b) of this section, the department shall allocate and distribute such
31 funds within thirty days of receipt.

1 (6) The following shall apply to any funds distributed under this
2 section:

3 (a) The department, any state or local agency or official, or any
4 private entity shall not place any additional requirements for receiving
5 housing assistance funding beyond those required by the federal agency
6 distributing the funds;

7 (b) Housing assistance funding received under this section shall not
8 be considered income for purposes of eligibility for any other form of
9 government assistance;

10 (c) If a landlord, mortgagee, trustee, or mortgage servicer refuses
11 to accept payment on behalf of a person in need of housing assistance,
12 the housing assistance funds shall be sent directly to such person;

13 (d) Housing assistance funds may be used to pay for rent, mortgage
14 payments, late fees, security deposits, and overdue rent;

15 (e) In order to receive housing assistance funds under this section,
16 a landlord shall agree not to take any action described in subsection (1)
17 of section 6 of this act for the period covered by such funding; and

18 (f) In order to receive housing assistance funds under this section,
19 a mortgagee or trustee shall agree not to take any action described in
20 subsection (1) of section 8 of this act for the period covered by such
21 funding.

22 (7) The department shall develop application forms and procedures as
23 necessary to allow persons to apply for housing assistance under this
24 section. The department may adopt and promulgate rules and regulations as
25 necessary to carry out this section.

26 (8) In determining eligibility for receipt of funding under this
27 section and in carrying out this section generally, the department shall
28 liberally construe this section in order to carry out its purpose.

29 Sec. 10. Section 25-21,223, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 25-21,223 The summons shall be issued and directed with a copy of

1 the complaint attached to the summons, shall state the cause of the
2 complaint, the time and place of trial of the action for possession, and
3 the answer day for other causes of action, and shall notify the defendant
4 that if he or she fails to appear, judgment shall be entered against him
5 or her. The summons may be served and returned as provided in sections
6 25-505.01 to 25-516.01, except that the summons shall be served within
7 three days, excluding nonjudicial days, from the date of its issuance and
8 shall be returnable within five days, excluding nonjudicial days, from
9 the date of its issuance. If service cannot be made with reasonable
10 diligence under such sections, service may be made by any person by
11 leaving a copy of the summons at the detained premises and mailing a copy
12 by first-class mail to the defendant's last-known address. The person
13 making the service shall file with the court an affidavit stating with
14 particularity the manner in which he or she made the service and, if
15 service was not made as provided in sections 25-505.01 to 25-516.01, the
16 reasons why service under such sections was unsuccessful. Unless
17 otherwise ordered by the court, trial ~~Trial~~ of the action for possession
18 shall be held not less than ten nor more than fourteen days after the
19 date of issuance of the summons.

20 Sec. 11. Section 76-1446, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 76-1446 Unless otherwise ordered by the court, trial ~~Trial~~ of the
23 action for possession shall be held not less than ten nor more than
24 fourteen days after the issuance of the summons. The action shall be
25 tried by the court without a jury. If the plaintiff serves the summons in
26 the manner provided in section 76-1442.01, the action shall proceed as
27 other actions for possession except that a money judgment shall not be
28 granted for the plaintiff. If judgment is rendered against the defendant
29 for the restitution of the premises, the court shall declare the
30 forfeiture of the rental agreement, and shall, at the request of the
31 plaintiff or his or her attorney, issue a writ of restitution, directing

1 the constable or sheriff to restore possession of the premises to the
2 plaintiff on a specified date not more than ten days after issuance of
3 the writ of restitution. The plaintiff shall comply with the Disposition
4 of Personal Property Landlord and Tenant Act and subsection (5) of
5 section 76-1414 in the removal of personal property remaining on the
6 premises at the time possession of the premises is restored.

7 Sec. 12. Original sections 25-21,223 and 76-1446, Reissue Revised
8 Statutes of Nebraska, are repealed.

9 Sec. 13. Since an emergency exists, this act takes effect when
10 passed and approved according to law.